

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DIANA ZOE ELLIS,

Plaintiff,

v.

MERRILL LYNCH, FENNER,
PIERCE,

Defendant.

NO. CV-08-254-LRS

ORDER OF DISMISSAL

In an order filed August 18, 2008 (Ct. Rec. 10), this court directed the Plaintiff to file an Amended Complaint correcting certain deficiencies identified by the court. On August 22, 2008, the court received a letter from the Plaintiff (Ct. Rec. 13) in response to the court's order which apparently asserts the court erred in requiring Plaintiff to file an Amended Complaint.

It appears the Plaintiff continues to insist her cause of action against the Defendant is in the nature of a criminal proceeding. As this court stated in its previous order, the Plaintiff cannot pursue criminal proceedings. Furthermore, Plaintiff cannot pursue civil proceedings in this court as an heir of her mother's estate unless she has been authorized to do so under Washington state law. Plaintiff has not alleged, nor offered any evidence, that she is so authorized. Finally, it is noted that a federal court has no jurisdiction to probate a will or administer a decedent's estate, or dispose of property in the custody of a state probate court as these are matters within the state probate court's *in rem*

1 jurisdiction. *Marshall v. Marshall*, 547 U.S. 293, 312, 126 S.Ct. 1735, 1747-1748
2 (2006). It appears to this court that the remedy Plaintiff seeks is obtainable only
3 through state probate court proceedings and that it would behoove the Plaintiff to
4 seek assistance of counsel for that purpose.

5 This action is **DISMISSED without prejudice** pursuant to Fed. R. Civ. P.
6 41(b) for Plaintiff's failure to submit an Amended Complaint which cures the
7 deficiencies identified by the court.

8 **IT IS SO ORDERED.** The District Court Executive is directed to enter
9 this order, forward a copy to Plaintiff, and **CLOSE** this file.

10 **DATED** this 2nd day of September, 2008.

11 *s/Lonny R. Suko*

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13 LONNY R. SUKO
14 United States District Judge
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